

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Kalkreuth Roofing and Sheet Metal Inc.

(b) County of Residence of First Listed Plaintiff Ohio County, West Virginia
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Sharon M. Menchuk, Esquire
Blumling & Gusk, 436 7th Avenue, 1200 Koppers Bldg.
Pittsburgh, PA 15219

DEFENDANTS

Lobar Associates Inc.
Arch Insurance Company

County of Residence of First Listed Defendant York County, PA
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|---------------------------------------|---------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input checked="" type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. §1332

Brief description of cause:

Breach of Contract - Construction / Procurement Code Claims

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE 08/08/2016

SIGNATURE OF ATTORNEY OF RECORD
/s/ Sharon M. Menchuk, Esquire

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

KALKREUTH ROOFING AND SHEET
METAL, INC.

Plaintiff,

v.

LOBAR ASSOCIATES, INC. and ARCH
INSURANCE COMPANY,

Defendants.

CIVIL ACTION

CIVIL ACTION NO.

ELECTRONICALLY FILED

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff, Kalkreuth Roofing and Sheet Metal, Inc., by and through its undersigned counsel, Blumling & Gusky, LLP, hereby files this Complaint against Defendants, Lobar Associates, Inc. and Arch Insurance Company, and in support thereof, avers as follows:

1. Plaintiff, Kalkreuth Roofing and Sheet Metal, Inc. ("Kalkreuth"), is a corporation with its principal place of business located at 53-14th Street, Suite 100, PO Drawer 6399, Wheeling, West Virginia 26003.

2. Defendant, Lobar Associates, Inc. ("Lobar") is a Pennsylvania corporation with its principal place of business located at 4 Barlo Circle, Dillsburg, York County, Pennsylvania 17019-3432.

3. Defendant, Arch Insurance Company ("Arch") is a Missouri corporation with its principal place of business located at 300 Plaza City, Jersey City, New Jersey 07311.

4. Defendant Arch is authorized to issue surety bonds in the Commonwealth of Pennsylvania.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this matter pursuant to complete diversity of citizenship as described in 28 U.S.C. §1332.

6. Additionally, the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

7. Venue is proper in this District and Division pursuant to 28 U.S.C. §1391, as a substantial part of the events or omissions giving rise to this claim occurred in this District and Division.

8. Defendant Lobar is subject to personal jurisdiction at the time of the commencement of this action due to its regularly conducting business in this District and Division.

9. Defendant Arch is also subject to personal jurisdiction at the time of the commencement of this action due to its regularly conducting business in this District and Division.

FACTUAL BACKGROUND

10. On or about October 16, 2014, Kalkreuth and Lobar entered into a Subcontract Agreement between Contractor & Subcontractor, Subcontract #141357610S8 ("Subcontract"). A true and correct copy of the Subcontract is attached hereto as **Exhibit "A"** and is incorporated herein by reference.

11. Pursuant to the Subcontract, Kalkreuth agreed to furnish all material and perform all work for Lobar that included, inter alia, roofing work according to plans and specifications on a project located in Fort Indiantown Gap, Lebanon County, Pennsylvania (the "Project") for the United States of America (the "Owner").

12. During the course of performing its Subcontract scope of work on the Project, Kalkreuth was also directed by Lobar to perform work in addition to and beyond the scope of the Subcontract.

13. The work beyond the scope of the Subcontract included the supply and installation of snow guards and the supply and installation of the crimp wall panels ("Additional Work").

14. At all times throughout Kalkreuth's performance of its work, Defendant Lobar observed and approved Kalkreuth's work on the Project, including but not limited to the Additional Work

15. Kalkreuth completed all of its work under the Subcontract, including the Additional Work in a workmanlike manner.

16. There has been no dispute as to the quality or completion of Kalkreuth's work in accordance with the Subcontract and at no time has there been any notice of any deficiency in Kalkreuth's work.

17. Kalkreuth submitted to Lobar a Subcontractor Application for Payment dated May 16, 2016 for its Subcontract work and Additional Work ("Payment Application"). A true and correct copy of the Payment Application is attached hereto as **Exhibit "B"** and incorporated herein by reference as if fully set forth.

18. The amount payable under the Payment Application is \$125,146.84 ("Balance Owed"). **Exhibit "B"**

19. Arch, as surety, issued a payment bond dated October 1, 2014, in favor of the Owner, as obligee, on behalf of Lobar, as the bond principal, for the benefit of any of Lobar's unpaid subcontractors that furnished labor, material, or both at the Project (the "Bond"). A true

and correct copy of the Bond is attached hereto as **Exhibit "C"** and incorporated herein by reference as if fully set forth.

20. In accordance with the terms and conditions of the Bond, if Lobar fails to pay its subcontractors, Arch is required to pay Lobar's subcontractors for furnishing labor and/or material on the Project and/or for the performance of any authorized modifications to the Subcontract.

21. Kalkreuth was a subcontractor who furnished labor and material in the prosecution of the work at the Project.

22. Thus, Arch is responsible to pay Kalkreuth the Balance Owed.

23. Kalkreuth has made demand for payment upon Lobar and Arch.

24. Neither Lobar nor Arch has paid Kalkreuth the Balance Owed.

COUNT I

Kalkreuth Roofing and Sheet Metal, Inc. v Lobar Associates, Inc. Breach of Contract

25. The preceding Paragraphs are incorporated herein by reference as though fully set forth herein.

26. Kalkreuth and Lobar entered into a valid and binding Subcontract. **See, Exhibit "A"**.

27. Kalkreuth fully performed all of the Subcontract work directed by Lobar.

28. Kalkreuth completed all of its work under the Subcontract, including the Additional Work in a workmanlike manner.

29. Kalkreuth has satisfied all conditions precedent to its right to payment under the Subcontract.

30. Despite repeated demands for payment, Lobar has failed and/or refused to pay Kalkreuth the Balance Owed in the amount of \$125,146.84.

31. Lobar's failure and/or refusal to pay Kalkreuth the Balance Owed constitutes a material breach of the terms of the Subcontract.

32. As a direct and proximate result of Lobar's material breach of the Subcontract, Kalkreuth has suffered damages, including but not limited to the outstanding balance of \$125,146.84.

WHEREFORE, Plaintiff, Kalkreuth Roofing and Sheet Metal, Inc., respectfully requests that this Honorable Court enter judgment in its favor and against Defendant, Lobar Associates, Inc., in an amount in excess of the jurisdictional limit of \$75,000.00, plus interest and such other relief as this Honorable Court deems just and equitable.

COUNT II
Kalkreuth Roofing and Sheet Metal, Inc. v Lobar Associates, Inc.
In the Alternative – Quantum Meruit

33. The preceding Paragraphs are incorporated herein by reference as though fully set forth herein.

34. In the absence of the finding of the existence of a contract between Kalkreuth and Lobar, Lobar is liable to Kalkreuth pursuant to the legal theory of *quantum meruit*.

35. Kalkreuth fully performed all of the Subcontract work and Additional Work directed by Lobar.

36. Lobar benefited from and has been unjustly enriched by Kalkreuth's performance of the work on the Project.

37. Kalkreuth conferred to Lobar the benefit of the work performed on the Project.

38. Lobar has accepted and retained the benefit of Kalkreuth's work on the Project.

39. Lobar has failed and/or otherwise refused to compensate Kalkreuth for work on the Project.

40. Lobar's failure and/or refusal to compensate Kalkreuth has caused Lobar to be unjustly enriched to the detriment of Kalkreuth.

41. Kalkreuth is entitled to the reasonable value of the work on the Project, including the Additional Work in the total amount of \$125,146.84.

WHEREFORE, Plaintiff, Kalkreuth Roofing and Sheet Metal, Inc., respectfully requests that this Honorable Court enter judgment in its favor and against Defendant, Lobar Associates, Inc., in an amount in excess of the jurisdictional limit of \$75,000, plus interest and such other relief as this Honorable Court deems just and equitable.

COUNT III

Kalkreuth Roofing and Sheet Metal, Inc. v Lobar Associates, Inc. Violations of the Commonwealth Procurement Code

42. The preceding Paragraphs are incorporated herein by reference as though fully set forth herein.

43. The Project and Kalkreuth's claims herein are governed by the Commonwealth Procurement Code.

44. Kalkreuth has not received proper notification of a good faith claim for a deficiency item pursuant to the Commonwealth Procurement Code, 62 Pa. C.S.A. §3934

45. Kalkreuth is entitled to interest at the statutory rate promulgated by the fiscal code from the date that payment was due pursuant to the Commonwealth Procurement Code, 62 Pa. C.S.A. §3933 (d).

46. Kalkreuth is also entitled to a penalty equal to one percent (1%) per month of the unpaid amounts from the date that payment was due pursuant to the Commonwealth Procurement Code, 62 Pa. C.S.A. §3935 (a).

47. Furthermore, Kalkreuth is entitled to recovery of its attorneys' fees and expenses incurred to recover the payment due pursuant to the Commonwealth Procurement Code, 62 Pa. C.S.A. §3935 (b).

WHEREFORE, Plaintiff, Kalkreuth Roofing and Sheet Metal, Inc., respectfully requests that this Honorable Court enter judgment in its favor and against Defendant, Lobar Associates, Inc., in an amount in excess of the jurisdictional limit of \$75,000.00, plus interest and such other relief as this Honorable Court deems just and equitable.

COUNT IV
Kalkreuth Incorporated v. Arch Specialty Insurance Company
Bond Claim

48. The preceding Paragraphs are incorporated herein by reference as though fully set forth herein.

49. In accordance with the terms and conditions of the Bond, Arch is obligated to pay Kalkreuth for furnishing labor and material, and performing the authorized Additional Work on the Project.

50. Kalkreuth, as a direct subcontractor to Lobar, is a proper claimant under the Bond.

51. Lobar has not compensated Kalkreuth for furnishing labor and material under the Subcontract, or for performing the authorized Additional Work on the Project.

52. Kalkreuth has satisfied all terms and conditions required for payment under the Bond.

53. Arch has improperly failed and/or refused to honor its obligations under the Bond.

WHEREFORE, Plaintiff, Kalkreuth Roofing and Sheet Metal, Inc., respectfully requests that this Honorable Court enter judgment in its favor and against Defendant, Arch Insurance Company, Inc., in an amount in excess of the jurisdictional limit of \$75,000.00, plus interest and such other relief as this Honorable Court deems just and equitable.

Respectfully submitted,

BLUMLING & GUSKY, LLP

/s/ Sharon M. Menchyk

Sharon M. Menchyk, Esquire

Pa. I.D. No. 85559

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